

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL COLEMAN SINGER,

Plaintiff,

DECISION AND ORDER

11-CV-6413L

v.

NATALIE SMITHOOVER, et al.

Defendants.

On October 28, 2010, plaintiff commenced the instant action *pro se*, seeking damages for personal injuries he allegedly suffered while in custody at the Seneca County Jail. (Dkt. #1). On May 24, 2012, defendants moved to dismiss the complaint for failure to prosecute. (Dkt. #37)

On November 9, 2012, while the motion to dismiss was pending, defendants' counsel filed a suggestion of death upon the record, and served a copy of it at plaintiff's residence, where plaintiff's adult son is believed to reside. (Dkt. #40).¹ The suggestion of death is supported by a copy of plaintiff's obituary, which appeared in the Finger Lakes Times on or about November 8, 2012 and was published online at legacy.com, and reported that plaintiff had died unexpectedly on November 1, 2012. (Dkt. #40).²

Rule 25(a)(1) of the Federal Rules of Civil Procedure provides that:

[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the

¹ Current telephone listings for plaintiff's son (via whitepages.com) continue to list his residence as plaintiff's former address in Ovid, NY.

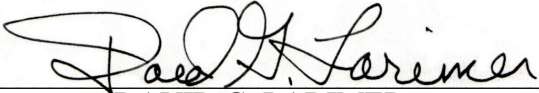
² The Court notes that the particulars of the obituary, including the deceased's name, middle initial, and street address, comport with plaintiff's personal information in the record. (Dkt. #1, #7, #40-1).

decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. Proc. 25(a)(1).

Because no one has moved to be substituted for plaintiff in this action and more than ninety days have passed since the suggestion of death was filed and served, the complaint is hereby dismissed, with prejudice, pursuant to Fed. R. Civ. Proc. 25(a)(1).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
March 6, 2013.